

ORDINANCE NO. 1270

AN ORDINANCE REPEALING AND REPLACING THE CITY OF BRYAN SMOKING ORDINANCE, CHAPTER 11, DIVISION 3, OF THE BRYAN CITY CODE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; FINDING AND DETERMINING THAT THE MEETINGS AT WHICH THIS ORDINANCE WAS ADOPTED WERE OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING FOR CODIFICATION; PROVIDING A PENALTY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRYAN, TEXAS:

Section 1.

That Chapter 11, Division 3. "Smoking", of the Bryan City Code is hereby repealed and is hereby amended to read as set forth in Exhibit "A" attached hereto.

Section 2.

That the Bryan City Code, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

Section 3.

Should any section, paragraph, sentence, clause, phrase or word of this ordinance be declared unconstitutional or invalid for any purpose by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby and to this end the provisions of this ordinance are declared to be severable.

Section 4.

It is hereby found and determined that the meetings at which this ordinance was adopted were open to the public, as required by Chapter 551, Texas Government Code, and that advance notice of the time, place, and purpose of said meetings was given.

Section 5.

It is the intention of the City Council that this ordinance shall become a part of the Bryan City Code and it shall be numbered and codified therein as set forth in Exhibit "A".

Section 6.

A person who violates any section of this ordinance is guilty of a misdemeanor and upon conviction is punishable in accordance with Section 1-14 of the Bryan City Code.

## Section 7.

That the City Secretary is directed to publish this ordinance in a newspaper of general circulation in the City of Bryan once a week for two consecutive weeks in accordance with the provisions of Section 9 of the City Charter, which publication shall be sufficient if it contains the title, penalty, and effective date of this ordinance.

## Section 8.

That this ordinance shall take effect from and after its final passage and publication as required by law. The effective date of this ordinance will be March 28, 2001.

PRESENTED AND GIVEN first reading the 13th day of February, 2001 at a regular meeting of the City Council of the City of Bryan, Texas; and given second reading, passed and approved on the 27th day of February, 2001, by a vote of 5 "yes" votes and 2 "no" votes at a regular meeting of the City Council of the City of Bryan, Texas.

ATTEST:

Mary Lynne Stratta  
Mary Lynne Stratta, City Secretary

CITY OF BRYAN

By:

Lonnie Stabler  
Lonnie Stabler, Mayor

APPROVED AS TO FORM:

Michael J. Cosentino  
Michael J. Cosentino, City Attorney

**Exhibit "A"****DIVISION 3. SMOKING****Sec. 11-66. Definitions**

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Public meeting* means a meeting required to be open to the public under Texas Government Code, Chapter 551.

*Public place* means an enclosed, indoor area to which the public has access and includes, but is not limited to the following:

- (1) the common areas of a retail store, office, grocery store, or other commercial establishments;
- (2) a restaurant or cafeteria;
- (3) a public or private primary or secondary school;
- (4) a public or private institution of higher education;
- (5) a hospital or nursing home;
- (6) an elevator;
- (7) City and school buses;
- (8) City buildings, owned or leased by the City for City purposes;
- (9) an enclosed theater, auditorium, movie house, or arena;
- (10) a courtroom or jury waiting or deliberation room.

*Smoke or smoking* includes:

- (1) carrying or holding a lighted pipe, cigar, or cigarette of any kind or any other lighted smoking equipment or device;
- (2) lighting a pipe, cigar, or cigarette of any kind or other smoking equipment or device; or

- (3) emitting or exhaling the smoke of a pipe, cigar, or cigarette of any kind or any other smoking equipment or device.

*Bar* means an establishment that is dedicated predominately to the serving of alcohol rather than food.

Sec. 11-67. Smoking prohibited in public places.

- (a) A person commits an offense if the person smokes at a public meeting or in a public place or in any other enclosed, indoor area in which "no smoking" signs are conspicuously posted by the person in charge, and the person is not in an area designated as a smoking area under Section 11-68 below.
- (b) It is an exception to the application of subsection (a) of this subsection that the person is smoking:
  - (1) in a situation in which the person is present at an event in which an entire room or hall is used for a private social function and seating arrangements are under control of the sponsor of the function;
  - (2) as a participant in an authorized theatrical performance;
  - (3) in a tobacco specialty shop;
  - (4) in a bar.

Smoking shall be allowed and smoking signs are not required to be posted by the person in charge under Section 11-69 when smoking is permitted by the exceptions set forth in this subsection.

Section 11-68. Designation of No Smoking and Smoking Areas.

- (a) The person in charge shall designate the following areas as "non-smoking":
  - (1) food order areas, cashier areas, check-out lines for stores;
  - (2) city library;
  - (3) elevators;
  - (4) City and school buses, including associated terminals;
  - (5) restrooms;

- (6) movie theaters, hospitals, and rest home facilities;
  - (7) within a twenty foot (20') radius of the entry way of all public places;
  - (8) restaurants or cafeterias with a seating capacity of fifty (50) people or less; and
  - (9) all other public places including restaurants and cafeterias with seating capacity of more than fifty (50) people.
- (b) The person in charge may designate a smoking area between the hours of 10:00 p.m. to 6:00 a.m. in restaurants and cafeterias with a seating capacity greater than fifty (50) persons; provided, however, the smoking areas cannot be greater than fifty percent (50%) of the seating capacity and there shall be a four foot (4') separation between the smoking and non-smoking areas.
- (c) Smoking areas shall not be designated to cover areas (a)(1) through (a)(8) of this Section. It is not required that any smoking areas be designated.

Section 11-69. Signs required.

- (a) The person in charge of a public place shall place signs visible at each entrance of the building to notify persons entering that smoking is prohibited or that smoking is prohibited except in areas designated as smoking areas.
- (b) The person in charge shall conspicuously post signs in areas designated as a smoking area that smoking is permitted in the area.

Section 11-70. Facilities to extinguish smoking materials required.

All public places shall be equipped for extinguishing smoking materials. Facilities for extinguishing smoking materials that are located in areas of public places other than designated smoking areas shall be accompanied by clearly visible signs, stating "no smoking".

**Section 11-71. Owner/operator responsible.**

A person commits an offense if he is the owner, operator, manager or an employee of an establishment and he intentionally permits or fails to make a reasonable effort to prevent smoking in a "no smoking" area.

**Section 11-72. Culpable mental state not required; exception.**

It is an offense for any person to perform an act prohibited or to fail to perform an act required under this, Division 3. of the Bryan City Code. There shall be no requirement of a culpable mental state for any violation under this Division except as provided in Section 11-71.

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